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21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23 LIONEL N. ALLEN; RALPH P. DAVIS;
 24 MONICA OATEZ; MICHAEL OATEZ;
 25 MARWAN OATEZ; JOHNNY D. STOKES,
 26 and, MICHAEL A. FLEURY,

27 Action No. C-07-03509-PJH

28 **JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

29 Date: March 27, 2008,
 30 Time: 1:30 p.m.
 31 Ctrm.: 3 / 17th Floor, S.F. Federal Bldg.

32 **Honorable Phyllis J. Hamilton**

33 Plaintiffs

34 vs.

35 CITY OF SAN LEANDRO, a municipal corporation;
 36 JOSEPH KITCHEN, in his capacity as Chief of Police
 37 for CITY OF SAN LEANDRO; and, DOES 1-25,
 38 inclusive, individually, and in their capacity as
 39 San Leandro police officers,

40 Defendants.

41 Parties to this action submit their Joint Case Management Conference Statement, and request
 42 the Court adopt it as the Case Management Order in this action:

43 **1. JURISDICTION AND SERVICE:**

44 This action arises under Title 42 U. S.C. Section 1983. Jurisdiction is conferred upon this
 45 Court by Title 28 U. S. C. Sections 1331 and 1333. The alleged acts and practices herein

1 occurred in the Cities of San Leandro and Oakland, California, which is within this judicial
 2 district. Venue is conferred upon this Court by Title 28 U. S. C. Section 1391(b).

3 **2. STATEMENT OF FACTS AND PRINCIPAL FACTS IN DISPUTE:**

4 **A. Plaintiffs' Description of Events Underlying the Action and Factual Bases for
 5 Claims:**

6 On 7-4-06, at approximately 9:00 p.m., all plaintiffs, except MICHAEL FLEURY, were at
 7 plaintiff LIONEL N. ALLEN's house, located at 543 Dowling Blvd., in San Leandro, California,
 8 where LIONEL ALLEN was hosting a fourth of July celebration, attended by approximately
 9 twenty (20) adults and children. Plaintiffs LIONEL ALLEN and RALPH P. DAVIS walked
 10 toward DAVIS' car, as plaintiff DAVIS was about to leave the party. As plaintiff DAVIS
 11 reached his car, he realized he did not have his keys, so plaintiff ALLEN went to retrieve them
 12 for him. Plaintiff DAVIS started to walk across the street toward plaintiff ALLEN to retrieve his
 13 keys from him. When plaintiff DAVIS reached the middle of the street, he noticed headlights
 14 coming at a high rate of speed towards him from Bancroft Street. Plaintiffs DAVIS and ALLEN
 15 then walked back towards plaintiff DAVIS' car on the opposite side of the street. As the
 16 speeding car approached them, plaintiffs ALLEN and DAVIS notice that the four to five men in
 17 that speeding car were undercover police officers. The speeding car stopped right in front of
 ALLEN and DAVIS.

18 At that time, approximately six (6) San Leandro Police Dept. (hereinafter referred to as
 19 "SLPD") and SLPD Swat team vehicles pulled up at a high rate of speed, and then stopped right
 20 near where the first undercover SLPD car had stopped in directly in front of plaintiffs DAVIS
 21 and ALLEN. Then, several defendant DOE officers jumped out of their vehicles, and without
 22 any just provocation or cause, drew their guns (which appeared to be rifles or assault weapons)
 23 and pointed them directly at plaintiffs DAVIS and ALLEN. One of the defendant officers
 24 shouted repeatedly, "Motherfucker, face down on the ground or I will kill you!"

25 Despite the fact that plaintiffs DAVIS and ALLEN complied with defendant officers, by lying
 26 face down on the ground, one of defendant officers, without any just provocation or cause, one of
 27 defendant officers proceeded to assault and batter plaintiff DAVIS, in that he violently grabbed
 28 him by his left arm, injuring his shoulder, turned him over onto his back, and continued to point
 his gun directly at plaintiff DAVIS' face, while another defendant officer conducted a search of

1 plaintiff DAVIS' person. When plaintiff DAVIS pleaded for his life to the defendant officer,
 2 said officer shoved his gun harder at plaintiff DAVIS' face and shouted, "Shut the fuck up."
 3

4 At the same time defendant officers were assaulting and battering plaintiff DAVIS, at least
 5 two (2) other defendant officers were assaulting and battering plaintiff ALLEN, without any just
 6 provocation or cause, in that said officers threw plaintiff ALLEN to the ground despite the fact
 7 that he was simultaneously complying with the police order to get down on the ground. Then, a
 8 defendant officer kicked plaintiff ALLEN in his left leg as he lay unresisting face-down on the
 ground.

9 While plaintiffs ALLEN and DAVIS were being assaulted and battered by defendant SLPD
 10 officers, other defendant SLPD officers were swarming into plaintiff ALLEN's house, ordering
 11 women and children at gunpoint to come out of the house, and terrifying everyone present,
 12 including children, who were screaming in fear, all without any just provocation or cause.

13 Plaintiffs MONICA OATEZ, MICHAEL OATEZ, MARWAN OATEZ, and JOHNNY D.
 14 STOKES, were among the people ordered out of plaintiff ALLEN's house by defendant officers
 15 with guns pointed at their faces, and assaulted and battered, without any just provocation or
 16 cause. Plaintiffs MICHAEL OATEZ, MARWAN OATEZ, and JOHNNY STOKES were all
 17 thrown to the ground at gunpoint by defendant officers, kneed in their backs, forced to lie down
 18 and be handcuffed, and were wrongfully detained, all without any just provocation or cause.

19 Plaintiff MONICA OATEZ was assaulted and battered in that defendant officers wrongfully
 20 pointed guns in her face, and wrongfully detained her. Further, she suffered severe and extreme
 21 emotional distress due to seeing her two sons, plaintiffs MICHAEL OATEZ and MARWAN
 22 OATEZ, thrown down to the ground, and seeing defendant police officers pointing guns at her
 23 sons heads as they lay on the ground.

24 Plaintiff JOHNNY STOKES was asleep in the living room when defendant officers awakened
 25 him with a gun pointed at his head, and then yanked him up by his shirt and arms, walked him
 26 outside the house and ordered him to get down on the ground. He asked, "What's going on?",
 27 and two defendant officers responded by throwing him down to the ground. He was handcuffed
 at his head as he lay unresisting on the ground.

28 Around the same time that the above plaintiffs were assaulted and battered and falsely

1 arrested or detained, plaintiff, MICHAEL A. FLEURY, had just attended a barbecue at a friend's
2 house, Bailey Partridge, at 566 Dowling Street, San Leandro, CA 94577. He left and went to his
3 car. As he was about to open his car door to get in, a car came speeding directly toward him with
4 bright lights on. Since it looked like the car was going to hit him, plaintiff FLEURY ran to the
5 sidewalk, and stopped there. At that point, a SLPD defendant officer, wearing jeans and a jacket
6 approached plaintiff FLEURY with his gun drawn, and said, "Put your hands up in the air." At
7 that time, that defendant did not identify himself as a police officer. Plaintiff FLEURY later
8 learned that this man was a defendant police officer.. Plaintiff FLEURY complied and put his
9 hands up in the air, and then saw a police car pull up behind this defendant officer who was
10 pointing his gun at plaintiff FLEURY. Plaintiff FLEURY said, "Whoever you are looking for,
you have the wrong person."

11 The defendant officer responded, "Shut up, and get on the ground.", and plaintiff FLEURY
12 complied. Plaintiff was asked for his name and address and identification, and he complied.
13 Then, after several minutes, defendant officers handcuffed plaintiff FLEURY very roughly
14 yanking his arms, and stood him up. Plaintiff FLEURY could then see about 15 to 18 police
15 cars, police dogs, and some police officers with assault rifles. As the defendant officers walked
16 plaintiff FLEURY to a police car, he saw other police officers mistreating other people, including
17 children, who came out of a white house. After sitting in the back of a police car for 20-40
18 minutes, two police officers said that they thought they had the wrong person, eventually released
19 plaintiff FLEURY from the police car, and told him he could go.

20 Plaintiff FLEURY's left shoulder (yanked back really hard by defendant officer and
21 handcuffed) and right knee (scraped and banged on the ground when plaintiff got down on the
22 ground when defendant officer ordered him to do so) were injured by defendant officers' assault
23 and battery upon him, and he suffers anxiety attacks as the result of defendant officers' assault
24 and battery and false detention against him, which was done without any just provocation or
cause.

25 Finally, an officer who appeared to be the Lieutenant in charge, established that defendant
26 officers had raided the wrong house, and attacked the wrong people, and that defendant officers
27 were actually looking for other people at another house when they committed the wrongful
28 actions against plaintiffs stated hereinabove. Said Lieutenant SLPD defendant officer then ordered

1 all plaintiffs be released from custody; and offered a cursory apology, handed out his business
 2 card to a few people, and left the scene, along with all the other defendant SLPD officers.

3 Defendant officers assaulted and battered all plaintiffs in this case, ransacked plaintiff
 4 ALLEN's house causing property loss and damages, and falsely detained all plaintiffs, all
 5 without any just provocation or cause. Plaintiffs had not done anything to provoke this assault
 6 upon them, and did nothing to physically resist these officers during their assault on them.
 7 Further, plaintiffs were unarmed. Further, plaintiffs complied with all orders given to them
 8 during this incident by defendant DOE SLPD officers.

9 **B. Defendants' Description of Events Underlying the Action and Factual Bases for
 Claims:**

10 Defendants contend that they were searching for an unknown assailant who moments
 11 before had fired shots from a blue PT Cruiser, the same car plaintiffs Lionel Allen and Ralph
 12 Davis were observed walking to that night. Given the totality of the circumstances, and the
 13 tense, rapidly evolving situation with which the officers were confronted, the City's officers are
 14 entitled to qualified immunity for their actions.

15 **C. Principle Disputed Facts:**

16 1. Facts regarding how the subject incident took place between police officers and plaintiffs;
 17 and,
 18 2. Facts regarding proof of Monell liability of defendants CITY OF SAN LEANDRO;
 19 JOSEPH KITCHEN; and DOES 11-25, inclusive.

20 **3. PRINCIPLED DISPUTED LEGAL ISSUES:**

21 1. Whether probable cause existed for the detention of plaintiffs: Civil Code Section 43 and
 22 Penal Code Section 236 for false arrest and imprisonment; BAJI 7.60, 7.61, 7.62, 7.63;
 23 Larson vs. City of Oakland (1971) 17 CA3d 91, 96; Allison vs. County of Ventura, (1977) 68
 24 CA3d 689; Sullivan vs. County of Los Angeles (1974) 12 C3d 710; City of Newport Beach vs.
 25 Sasse (1970) 9 C.A. 3d 803, 810; Dragna vs. White (1955) 45 C2d 469, 471; Milliken vs. City of
 26 South Pasadena (1979) 158 Cal.Rptr. 409; Floro vs. Lawton (1960) 187 1 C.A. 2d 657, 667;
 27 Muller vs. Reagh (1963) 215 C.A. 2d 831, 836; People vs. Agnew (1940) 16 C. 2d 655, 661;
 28 People vs. Zilbauer (1955) 44 C. 2d. 43, 50; Collins vs. City and County of San Francisco (1975)
 29 50 C.A. 3d 671, 673; Moore vs. San Francisco (1970) 5 C.A. 3d 728; Onick vs. Long (1957) 154
 C.A. 2d 381; Gorlack vs. Ferrari (1960) 184 C.A. 2d 702;

29 2. Whether the force used by defendant police officers DOES 1-10 against plaintiffs was
 30 objectively reasonable under the circumstances: 42 U.S.C. Section 1983; Benach v. County of

1 Los Angeles (1997) 60 C.A.4th 637, 652; Mendez Marrero v. Toledo (D.Puerto Rico 1997) 968
 2 F.Supp. 27, 35; Doerle v. Rutherford (9th Cir. 2001) 263 F.3d 1106, 1114; Headwaters Forest
 3 Defense v. County of Humboldt (9th Cir. 2000) 240 F.3d 1185-1198-1199; Palacios v. City of
 4 Oakland (N.D.Cal. 1997) 970 F.Supp. 732, 740; Chew v. Gates (9th Cir. 1994) 27 F.3d 1432,
 5 1440-1441; People v. Daniels (1998) 62 C.A.4th 1529, 1538; Allen v. Muskogee, Oklahoma
 6 (10th Cir. 1997) 119 F.3d 837, 840; Martinez v. County of Los Angeles (1996) 47 C.A.4th 334,
 7 343-344;

6 3. Whether defendant police officers are entitled to qualified immunity: Same statutes and
 7 case law as subsection 2. herein;

8 4. Whether plaintiffs' damages were caused by defendants' unreasonable use of force against
 9 plaintiffs; false detention or arrest of plaintiffs; and/or racially motivated misconduct towards
 10 plaintiffs: Same statutes and case law as subsection 2. herein;

11 5. Whether defendant police officers DOES 1-10 are liable to plaintiffs for negligence (and/or
 12 negligent infliction of emotions distress, as part of plaintiffs' negligence cause of action): Civil
 13 Code Section 1714; Government Code Section 815.4; Thing vs. La Chusa (1989) 48 C3d 644,
 14 663-644; Molien vs. Kaiser Foundation Hospitals (1980) 27 C3d 916, 928; Rodrigues vs. State
 15 (1970) 52 Hawaii 156, 173; Krupnick v. Hartford Accident & Indemnity Co. (1994, 4th Dist.)
 16 28 C.A.4th 185, 198-209; People v. Pfeffer (1964) 224 C.A.2d 578, 580-581; Rice v. Southern
 17 Pacific Co. (1967) 247 C.A.2d 701, 710;

18 6. Whether defendant police officers DOES 1-10 are liable to plaintiffs for intentional
 19 infliction of emotional distress: Newby vs. Alto Riviera Apartments (1967) 60 CA3d 288, 296;

20 7. Whether defendant police officers DOES 1-10 are liable to plaintiffs for violation of Civil
 21 Code Section 52.1: Civil Code Section 52.1;

22 8. Whether defendant police officers DOES 1-10 are liable to plaintiffs for assault and
 23 battery: Civil Code Section 43; Penal Code Sections 240 and 242; Scruggs vs. Haynes (1967)
 24 252 C.A. 2d 256, 266; BAJI 7.50, 7.51; People vs. Cavazos (1985, 5th District.) 172 C.A. 3d
 25 589; People vs. Valdez (1985 2d. District) 175 C.A. 3d 103; People vs. Burres (1980) 101 C.A.
 26 3d 341; People vs. Mendoza (1942) 55 C.A. 2d 625; Lopez vs. Surchia (1952) 112 C.A. 2d 314,
 27 318; Singer vs. Marx (1956) 144 C.A. 2d 637, 641; Lowry vs. Standard Oil Company (1944) 63
 28 C.A. 2d 1, 7;

29 9. Whether defendant police officers DOES 1-10 are liable to plaintiffs for false detention
 30 and/or arrest: Civil Code Section 43 and Penal Code Section 236 for false arrest and
 31 imprisonment; BAJI 7.60, 7.61, 7.62, 7.63; Larson vs. City of Oakland (1971) 17 CA3d 91, 96;
 32 Allison vs. County of Ventura, (1977) 68 CA3d 689; Sullivan vs. County of Los Angeles (1974)
 33 12 C3d 710; City of Newport Beach vs. Sasse (1970) 9 C.A. 3d 803, 810; Dragna vs. White
 34 (1955) 45 C2d 469, 471; Milliken vs. City of South Pasadena (1979) 158 Cal.Rptr. 409; Floro vs.
 35 Lawton (1960) 187 1 C.A. 2d 657, 667; Muller vs. Reagh (1963) 215 C.A. 2d 831, 836; People
 36 vs. Agnew (1940) 16 C. 2d 655, 661; People vs. Zilbauer (1955) 44 C. 2d. 43, 50; Collins vs.

1 City and County of San Francisco (1975) 50 C.A. 3d 671, 673; Moore vs. San Francisco (1970) 5
 2 C.A. 3d 728; Onick vs. Long (1957) 154 C.A. 2d 381; Gorlack vs. Ferrari (1960) 184 C.A. 2d
 3 702;

4 10. Whether defendants CITY OF SAN LEANDRO; JOSEPH KITCHEN; and/or DOES 11-
 5 25, inclusive, acted with deliberate indifference and are liable to plaintiffs under Monell: 42
 6 U.S.C. Section 1983; Board of County Com'rs of Bryan County, Oklahoma v. Brown (1997) 117
 7 S.Ct. 1382, 1387-1388; Perkins v. City of West Covina (9th Cir. 1997) 113 F.3d 1004, 1010;
 8 Palacios v. City of Oakland (N.D.Cal. 1997) 970 F.Supp. 732, 743; Diaz v. Salazar (D.N.M.
 9 1996) 924 F.Supp. 1088, 1098; Allen v. Muskogee, Oklahoma (10th Cir. 1997) 119 F.3d 837,
 10 841-842;

11 11. Whether any or all plaintiffs are entitled to an award of punitive damages against
 12 defendant police officers DOES 1-10, inclusive: Same statutes and case law as subsections 1-4
 13 and 6-9 herein

14 12. Whether plaintiffs are comparatively at fault: Same statutes and case law as subsection 5.
 15 herein.

16 **4. MOTIONS:**

17 Plaintiffs: Stipulation and Proposed Order for Leave to File First Amended Complaint will
 18 be necessary as soon as defendants produce a police report relevant regarding plaintiffs' subject
 19 detention and defendant officers in said detention and assault and battery on plaintiffs. The
 20 police report thus far produced by defendants has no information relative to plaintiffs, and
 21 Defendants' Initial Disclosure Statement thus far served, does not name the officers involved in
 22 the subject incident with plaintiffs. Motions to compel discovery, if necessary; and motions in
 23 limine.

24 Defendants: Summary Judgment/Summary Adjudication motion, if appropriate after
 25 discovery; motions in limine.

26 **5. AMENDMENT OF PLEADINGS:**

27 Plaintiffs will seek to file a First Amended Complaint pursuant to Stipulation and Proposed
 28 Order for Leave to File First Amended Complaint, to amend or substitute names of defendants
 29 for DOE defendants, to be learned through production from defendants of a complete relevant
 30 police report, and hopefully, an Amended Initial Disclosure Statement from defendants, or
 31 through discovery for DOE defendants; and/or to amend, add, or dismiss any Cause of Action.

32 Defendants dispute that any such information exists and that Plaintiffs are not entitled to

This can be done in a particularly straightforward way by means of the actuator according to Claim 31.

A ring according to Claim 32 is a particularly simple counter-support body for a force-inducing device, which may 5 then also be designed as a component carried by the correction element itself. As an alternative or in addition, it is possible to use a support ring which encloses the correction element and on which the actuator acting on the correction element, which need not itself be of annular 10 design, is supported. The use of such rings furthermore allows a force-inducing device in which no lateral displacement of the correction element can occur during the force induction.

Owing to the large static forces which are required during 15 static force induction, damage to the correction element cannot always be ruled out. Furthermore, the stress state of the correction element may change over time under prolonged force induction, for example owing to drift effects. These restrictions are overcome when a correction 20 element according to Claim 33 is used. A substantially higher stress birefringence can be produced briefly with dynamic force induction, without the risk of breakage, than is the case with static force induction. Furthermore, the value of the corrective action to be obtained may 25 optionally be adjusted sensitively by means of the amplitude of the dynamic force induction, and this may even be done externally with a completed projection objective.

An average force induction which is comparable to that of static force induction can be obtained by means of a force- 30 inducing device according to Claim 34.

In this case, a force-inducing device according to Claim 35 leads to maximisation of the corrective action for a given applied force.

A projection illumination system according to Claim 36,
5 with force induction in-time with the emission of the projection-light beam, leads to the compensation always being obtained accurately when projection light is shone through the projection optics. The load on the correction element is reduced at the same time.

10 A control device according to Claim 37 then ensures simple matched timing.

When a force-inducing device according to Claim 38 is used, a refractive-index profile which has a similar spatial distribution to the sound-wave profile is produced by means
15 of the sound-wave profile. The sound-wave profiles can be resolved into the Zernike functions in a similar way to optical wavefronts. Any superposition of orthogonal Zernike basis functions can therefore be produced as refractive-index profiles. With a number N of actuators, for example,
20 correction profiles can be produced with a multiplicity of $N/2$. In principle, all known imaging errors can be reduced in this way.

A standing sound wave according to Claim 39 leads to static imaging-error correction.

25 As an alternative, dynamic imaging correction may be carried out according to Claim 40. In this case, for example, the imaging properties of the objective can be deliberately modified during the projection by using an intermittent projection-light beam, so that optimum imaging
30 conditions for the projection prevail at the time when the

light beam is affected by the optical element. As an alternative, by the dynamic imaging-error correction according to Claim 40 it is possible to produce a slowly, for example of the order of magnitude of 1/100 s, variable 5 force distribution in the optical element on the timescale of the light application, for example in order to optimise the corrective action on the lighting distribution which is used or on the reticle structure just imaged.

Exemplary embodiments of the invention will be explained in 10 more detail below with reference to the drawing, in which:

Figure 1 schematically shows projection illumination apparatus according to the invention, partially in meridian section;

15 Figure 2 shows an optical correction element, which is an alternative to the one integrated in the projection illumination apparatus according to Figure 1;

Figure 3 shows a meridian section of one half of another alternative optical correction element;

20 Figure 4 shows a detailed excerpt of one movable bearing body of a force-inducing device cooperating with the optical correction element according to Figure 3, which is an alternative to the bearing body according to Figure 3;

25 Figure 5 shows a similar representation to Figure 3 of an optical correction element with an alternative force-inducing device;

Figure 6 shows a plan view of the embodiment according to Figure 5;

Figure 7 shows a similar representation to Figures 3 and 5 of an alternative optical correction element with an alternative force-inducing device;

Figure 8 shows a plan view of the embodiment according to
5 Figure 7; and

Figures 9 to 12 show embodiment variants of alternatives of bearing bodies which can be used in conjunction with the force-inducing devices represented above.

Arranged with respect to an optical axis O, Figure 1 shows
10 a light source 1, which is preferably a laser emitting with a narrow band at 157 nm or 193 nm. Its light is delivered to a lighting system 2 which, as a special feature, may contain means 21 for producing radial polarisation, as are known from DE 195 35 392 A1. This is used to light a
15 microlithographic reticle 3 which is connected to a reticle-holding and -positioning system 31. The subsequent projection objective 4 images the reticle 3 onto the object 5 - typically the wafer - arranged in the image plane. The object 5 is provided with a object-holding and -
20 positioning system 51.

The projection objective 4 comprises a group 41 of lenses and, if need be, also one or more mirrors, a pupil plane or system aperture plane P and, between this plane P and the plane of the object 5, lenses 42, 43 whose transmission
25 angle α is dictated by the numerical aperture NA on the image side of the projection objective.

At least one of the lenses 42, 43 consists of a material with angle-dependent birefringence, for example calcium fluoride, the (111) orientation of which coincides with the
30 optical axis O or deviates by up to about 5°.